

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

NATHANIEL J. RICHARDSON, JR., :
Petitioner(s), : Case Number: 1:05cv257
vs. : District Judge Susan J. Dlott
ERNIE MOORE, :
Respondent(s). :

ORDER

This matter is before the Court pursuant to the Order of General Reference in the United States District Court for the Southern District of Ohio Western Division to United States Magistrate Judge Timothy S. Black. Pursuant to such reference, the Magistrate Judge reviewed the pleadings and filed with this Court on December 20, 2006 Report and Recommendations (Doc. 51). Subsequently, the Respondent filed objections to such Report and Recommendations (Doc. 57) and Petitioner filed a reply to the objections (Doc. 58).

The Court has reviewed the comprehensive findings of the Magistrate Judge and considered de novo all of the filings in this matter. Upon consideration of the foregoing, the Court does determine that such Recommendations should be adopted.

Accordingly, Petitioner's petition for writ of habeas corpus pursuant to 28 U.S.C. 2254
(Doc. 1) is DENIED with prejudice.

A certificate of appealability will not issue with respect to the claim alleged in Ground Nine, which this Court has concluded is waived and thus barred from review on procedural grounds, because “jurists of reason would not find it debatable as to whether this Court is correct in its procedural ruling” under the first prong of the applicable two-part standard enunciated in

Slack v. McDaniel, 529 U.S. 473, 484-85 (2000).

With respect to the remaining claims alleged in Grounds One through Eight and Ten through Thirteen of the petition, which are addressed on the merits herein, petitioner only has made a substantial showing that the sufficiency of evidence of claims alleged in Grounds Ten and Eleven state “viable claims[s] of the denial of a constitutional right” or are “adequate to deserve encouragement to proceed further;” therefore, a certificate of appealability will issue only for the claims alleged in Grounds Ten and Eleven and will not issue for the remaining claims alleged in Grounds One through Eight and Twelve through Thirteen of the petition. *See Slack*, 529 U.S. 473, 475 (2000) (citing *Barefoot v. Estelle*, 463 U.S. 880, 893 & n.4 (1983); *see also* 28 U.S.C. § 2253(c)); Fed. R. Appl P. 22(b).

With respect to any application by petitioner to proceed on appeal *in forma pauperis*, the Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of any Order adopting this Report and Recommendation would be taken in “good faith,” and therefore GRANTS petitioner leave to appeal *in forma pauperis* upon a showing of financial necessity. *See* Fed. R. App. P. 24(a); *Kincade v. Sparkman*, 117 F.3D 949, 952 (6th Cir. 1997).

IT IS SO ORDERED.

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s/Susan J. Dlott
Susan J. Dlott
United States District Judge